

## REMARKS

This Application has been carefully reviewed in light of the Office Action mailed October 29, 2007. At the time of the Office Action, Claims 1-20 were pending in this Application. Claims 1-20 were rejected. Claims 1, 3, 4, 8, 10, and 15-20 have been amended to correct clerical errors. New Claims 21-26 have been added. Applicants respectfully request reconsideration and favorable action in this case.

### Rejections under 35 U.S.C. § 112

Claims 1-4, 8, 10, 12 and 15-20 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended Claims 1, 3, 4, 8, 10, and 15-20 to overcome these rejections and respectfully request full allowance of Claims 1, 3, 4, 8, 10, and 15-20 as amended.

Claims 2, 12, and 19 were rejected based on the term “the group,” for which the Examiner claims lacks sufficient antecedent basis. However, Applicants submit that Claims 2, 12, and 19 are properly worded Markush-type claims. For example, according to M.P.E.P. § 803.02, “[a] Markush-type claim recites alternatives in a format such as “selected from **the group** consisting of A, B and C.” See *Ex parte Markush*, 1925 C.D. 126 (Comm'r Pat. 1925).” (emphasis added). Thus, Applicants respectfully request withdrawal of the rejections of Claims 2, 12, and 19 based on the term “the group.”

### Rejections under 35 U.S.C. §103

#### Claims 1-5, 8-12, 15-17, 19 and 20

Claims 1-5, 8-12, 15-17, 19 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Published Patent Application No. 2002/0059434 by Jeyhan Karaoguz et al. (“Karaoguz”), in view of U.S. Published Patent Application No. 2004/0204079 by Rabah S. Hamdi (“Hamdi”).

It is well established law that in order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Applicants submit that *Karaoguz* and *Hamdi* clearly do not disclose all limitations of Applicants' claims. For example, regarding Claim 1, neither *Karaoguz* nor *Hamdi* disclose:

“while conducting network communications with the first network protocol, automatically determining whether switching from the first network protocol to the second network protocol would improve performance for the client system;”

or

“in response to determining that switching to the second network protocol would cause improved performance for the client system, automatically switching from the first network protocol to the second network protocol.”

In fact, neither *Karaoguz* nor *Hamdi* disclose anything regarding dynamically switching between network protocols. *Karaoguz* concerns selecting which network to connect to, not switching between network protocols. These are distinct concepts, as would be understood by a person of ordinary skill in the art.

For example, *Karaoguz* discloses:

A network selector 94 may be used to determine whether to connect to a detected network. In some instances the device may be configured to only connect to certain types of networks. In other instances the device may be configured to choose between two or more detected networks. (Paragraph 0045; emphasis added).

Thus, *Karaoguz* discloses determining whether to connect to a detected network, or choosing between two or more detected networks to connect to. *Karaoguz* discloses nothing regarding switching between network protocols, much less “while conducting network communications with the first network protocol, automatically determining whether switching from the first network protocol to the second network protocol would improve performance for the client system,” as recited in Claim 1. *Karaoguz* discloses nothing about determining whether to switch from a currently selected network protocol to a different network protocol to improve system performance.

According to the Examiner, *Karaoguz* discloses every limitation of Claim 1, except “conducting network communications from a client system via a first network protocol,” which the Examiner alleges is taught by *Hamdi*. Applicants concede that *Hamdi* discloses conducting network communications from a client system via a first network protocol. However, conducting network communications from a client system via a first network protocol is clearly not the same as automatically switching from a first network protocol to a second network protocol, just as driving a car in first gear is clearly not the same as automatically switching from first gear to second gear. Again, neither *Karaoguz* nor *Hamdi* disclose switching between network protocols.

To summarize, *Karaoguz* discloses determining whether to connect to a detected network, or choosing between two or more detected networks to connect to. *Hamdi* discloses conducting network communications via a first network protocol (e.g., IEEE 802.11a, 802.11b, or 802.11g standards). Even assuming arguendo that *Karaoguz* could be modified to use the 802.11 family protocols disclosed in *Hamdi*, the combination would still fail to teach or suggest dynamically switching between network protocols. More particularly, the combination would still fail to teach or suggest (a) “while conducting network communications with the first network protocol, automatically determining whether switching from the first network protocol to the second network protocol would improve performance for the client system” or (b) “in response to determining that switching to the second network protocol would cause improved performance for the client system, automatically switching from the first network protocol to the second network protocol.”

For at least these reasons, Claim 1 is allowable over the proposed *Karaoguz-Hamdi* combination. Therefore, Applicants respectfully request reconsideration and allowance of Claim 1, as well as all claims that depend from Claim 1. In addition, for analogous reasons, Applicants respectfully request reconsideration and allowance of independent Claims 8 and 15, as well as all claims that depend from Claims 8 or 15.

Claims 6, 7, 13, 14 and 18

Claims 6, 7, 13, 14 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Karaoguz*, in view of *Hamdi*, as applied to Claims 1, 8, and 15 above, and further in view of U.S. Patent No. 6,591,382 issued to Walter Molloy et al. (“*Molloy*”).

Applicants submit that Claims 6, 7, 13, 14 and 18 are allowable at least because they depend from amended Claim 1, 8, and 15, shown above to be allowable.

**New Dependent Claims 21-26 are allowable.**

Applicants submit that new dependent Claims 21-26 are allowable over the cited references. For example, new Claim 21 depends from independent Claim 1 and recites “receiving input from a user regarding one or more performance factors to be used in determining whether to dynamically switch between network protocols; and determining whether to switch from the first network protocol to the second network protocol based at least on the user input regarding the one or more performance factors.”

New Claims 23 and 25 depend from independent Claims 8 and 15, respectively, and recite similar limitations. New Claims 22, 24, and 26 depend from Claims 21, 23, and 25, respectively.

None of the cited references disclose the limitations recited in dependent Claims 21-26. Therefore, Applicants respectfully request consideration and allowance of new Claims 21-26.

### **CONCLUSION**

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants hereby authorize the Commissioner to charge \$300.00 to the Deposit Account No. 50-2148 for new dependent Claims 21-26.

Applicants believe there are no other fees due at this time; however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2689.

Respectfully submitted,  
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Date: January 29, 2008

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